

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

DANA DE’SALLE ZEIGLER,

Plaintiff,

vs.

**DEPUTY OTALVARO;
SARGENT STRAIGHT;
SHERIFF GLANZ,**

Defendants.

Case No. 13-CV-065-JHP-FHM

OPINION AND ORDER

On January 31, 2013, Plaintiff, a prisoner appearing pro se, filed a 42 U.S.C. § 1983 civil rights complaint (Dkt. # 1), and a motion to proceed in forma pauperis (Dkt. # 2). He also provided three (3) completed summonses and three (3) partially completed USM-285 Marshal service forms. By Order filed February 5, 2013 (Dkt. # 3), the Court granted Plaintiff’s motion to proceed in forma pauperis and directed him to pay an initial partial filing fee of \$11.97. On March 13, 2013, Plaintiff paid an initial partial filing fee of \$12.00. By Opinion and Order filed March 15, 2013 (Dkt. # 6), the Court determined that the complaint failed to state a claim upon which relief may be granted and was subject to being dismissed. However, to avoid dismissal, Plaintiff was given the opportunity to file an amended complaint to cure the identified deficiencies. See Dkt. # 6. The Opinion and Order established a deadline of April 18, 2013, for compliance. Id. Plaintiff was specifically advised that should he fail “to file an amended complaint, this action will be dismissed without prejudice for failure to state a claim upon which relief may be granted.” See id.

A. Complaint shall be dismissed

As of today's date, Plaintiff has failed to file an amended complaint as directed by the Court. His deadline has passed. For the reasons discussed in the prior Opinion and Order (Dkt. # 6), Plaintiff's complaint fails to state a claim upon which relief may be granted. Therefore, the complaint shall be dismissed without prejudice.

B. First "prior occasion" under 28 U.S.C. § 1915(g)

Plaintiff has been granted leave to proceed *in forma pauperis*. In addition, his complaint fails to state a claim upon which relief may be granted. As a result, the complaint shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). This dismissal shall count as Plaintiff's first "prior occasion" under 1915(g) (providing that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury").

C. Filing fee obligations

As a final matter, Plaintiff is reminded that he remains obligated to pay in monthly installments the balance owed on the filing fee for this case. See 28 U.S.C. § 1915(b). To date, the Court has received three partial payments totaling \$40.00. Therefore, as of today's date, the balance owed is **\$310.00**.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. The complaint (Dkt. # 1) is **dismissed without prejudice** for failure to state a claim upon which relief may be granted.
2. The Clerk is directed to **flag** this dismissal as Plaintiff's first "prior occasion" for purposes of 28 U.S.C. § 1915(g).
3. Plaintiff remains obligated to pay in monthly installments the balance owed on the filing fee for this case. As of today's date, the balance owed is **\$310.00**.
4. This is a final Order terminating this action. A separate judgment shall be entered in this matter.

DATED THIS 29th day of May, 2013.


James H. Payne
United States District Judge
Northern District of Oklahoma